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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,424	08/05/2003	Yoshimi Tsujiyama	JCLA11962	7330
23900	7590	09/25/2007		
J C PATENTS, INC. 4 VENTURE, SUITE 250 IRVINE, CA 92618			EXAMINER TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	
			MAIL DATE	DELIVERY MODE
			09/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/635,424

Applicant(s)

TSUJIYAMA ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 111703, 60407
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 11, 2007 has been entered.

Election/Restrictions

2. Newly submitted claims 15-16 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claims were directed to a product (a nonwoven fabric) and the newly included claims are directed to a method of making a nonwoven fabric.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 15-16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Amendment

3. Claims 2 and 8-14 have been canceled by Applicant's amendment. Claims 1, 3-7 and 15-16 are pending with claims 15-16 withdrawn as the claims are directed a non-elected invention.

Response to Arguments

4. Applicant's arguments filed July 11, 2007 have been fully considered but they are not persuasive.

a. Independent claim 1 has now been amended to require that the elastomeric and nonelastomeric fibers “*are uniformly mixed together by spinning with a melt-blowing or a spun bonding method that use a spinneret having both a spinning hole for discharging elastomeric resin and another spinning hole for discharging nonelastomeric resin thereon*”, and further require that “*the ratio of Bd/Ad is no less than 2*”.

It is noted herein that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The prior art of Sisson either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the Sisson reference.

b. Applicants argue that the mixing uniformity of the fibers in the Sisson reference is lower than that in the instant invention and further argue that the prior art does not provide the now claimed Bd/Ad ratio.

As previously stated, Applicant's are not commensurate in scope with the claims since there is no degree of uniformity specified in the claims. It is further noted that SISSON teaches mixing and intermingling of the filaments prior to collection thereof on the forming surface. (Refer to Col. 6, lines 54-56) It is the Examiner's interpretation that such teaching provides a material with uniformity. As stated above, determination of patentability is based on the product itself. With regards to the ratio comparing the diameter of the two fibers, the Examiner maintains the position that the prior art of record (SISSON in view of COLLIER IV) meet the preferred disclosed diameters of the present invention, therefore, it encompass the claimed range.

Therefore, claims 1 and 3-7 remain rejected over SISSON in view of COLLIER IV herein.

5. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over SISSON (US 4,107,364) in view of COLLIER IV (US 5,260,126).

SISSON discloses a cloth structure comprising at least two types of organic polymer fibers, at least one of which is elastomeric and at least one of which is elongatable but non-elastic. Each of the non-elastic and elastomeric fibers comprises separately melt spun textile denier filaments. The elastomeric filaments comprise approximately 10-90%, by weight, of the cloth. The reference further teaches that the elastomeric fiber comprises polyurethane. (Refer to Abstract; Claims 1-2, 4, 22, 29-31) The reference teaches that at least two separate streams of

monofilaments of one or more fiber forming synthetic organic polymers are melt spun through one or more preferably linear dies or spinnerettes from one or more extruders. (Col. 6, lines 42-47) The reference further teaches that additional layers may be incorporated into the cloth. (Col. 14, lines 39-42) Example I of the reference teaches a nonwoven elastic cloth made of polyester filaments of 3.6 denier and polyester type polyurethane polymer fiber forming elastomer filaments of 5.4 denier. (Refer to Col. 15, lines 43-46; Col. 16, line 48; Col. 17, lines 3, 18) It is further noted that the reference teaches mixing and intermingling of the filaments prior to collection thereof on the forming surface. (Refer to Col. 6, lines 54-56) It is the Examiner's position that such teaching will provide a uniform mix of the fibers. As stated below, the prior art of would meet the preferred diameter values disclosed in the present invention and ranges that fall about the claimed ratio range would be obvious.

The Examiner further provides COLLIER IV to provide motivation for the use of micron level diameters in elastic nonwoven webs of fibers.

COLLIER, IV et al. discloses elastic nonwoven webs of fibers. The reference teaches materials suitable for use in applications such as disposable garments. (Col. 1, lines 24-26) The reference teaches that the elastic nonwoven web of fibers may be a web of meltblown fibers or spunbonded fibers. The elastic nonwoven web may also include at least one type of nonelastic fibers, for example nonelastic microfibers, which are distributed within or upon the matrix. If nonelastic fibers are present in the elastic nonwoven web, the elastic nonwoven web may generally include from about 20 percent, by weight, to about 99 percent, by weight, of fibers formed from a styrene-poly (ethylene propylene)-styrene blend and from about 1 percent, by weight to 80 percent, by weight, of the nonelastic fibers. (Col. 5, lines 1-37) On Table 1 of the

reference, some physical properties of the styrene-poly(ethylenepropylene)-styrene block copolymer used by the reference are disclosed. (Col. 7) With regards to the average diameter of the fibers and the relation of diameters between the elastomeric and nonelastomeric fibers, it is the Examiner's interpretation that the teaching of using micro fibers (of diameters of about 100 microns or less, for example, 0.5-50 microns) reads on the values claimed herein. (Refer to col. 2, lines 28-33)

Although SISSON does not explicitly teach the claimed properties of elongation recovery rate or separation resistance it is reasonable to presume that these properties are inherent to the cloth structure of SISSON. Support for said presumption is found in the use of like materials (i.e. a homogeneous blend of continuous elastomeric filaments and non-elastomeric filaments produced by melt-spun). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of properties of elongation recovery rate or separation resistance would obviously have been present one the SISSON product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Since both references are directed to elastic webs, the purpose disclosed by COLLIER IV would have been recognized in the pertinent art of SISSON.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the diameter of the fiber to be within the microfiber diameter range (under 100 microns) with the motivation of providing a material suitable for the construction of disposable garments as disclosed by COLLIER IV (Col. 1, lines 11-25) It is the

Examiner's position that the prior art encompasses fiber diameters that would provide combinations that will read on the claimed ratio.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Norca L. Torres-Velazquez/
Primary Examiner, Art Unit 1771

/N. L. T./

September 19, 2007